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PERMANENT SOVEREIGNTY OVER MINERALS AND WATER RESOURCES

Report of the Secretary-General

SUMMARY

The present report has been submitted in response to the request of the Economic and Social Council put forth in its resolution 1991/88, paragraph 5. This report continues the regular reporting on developments related to the exercise of permanent sovereignty over natural resources. In particular, it reviews developments and trends with respect to the exercising of permanent sovereignty in the context of sustainable development, discusses salient issues affecting water resources and describes the focus of technical cooperation activities of the Department of Economic and Social Development of the United Nations Secretariat in support of Governments in the exercise of permanent sovereignty over natural resources.

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INTRODUCTION

1. Since the adoption by the General Assembly of the relevant resolutions 523 (VI) of 12 January 1952, 1803 (XVII) of 14 December 1962 and 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, the Economic and Social Council and the Committee on Natural Resources have been monitoring developments in the area of the exercise of permanent sovereignty over natural resources. The present report is submitted in accordance with the request of the Council in its resolution 1991/88, paragraph 5.

2. The main objective of the report of the Secretary-General on the present topic has always been to survey current trends related to the implementation of the principle of permanent sovereignty over natural resources, in particular concerning the relationship between mineral-producing developing countries and the international economic system. Many, if not most, countries consider that principle a part of international law, and link it closely with their capability to use their natural resources more efficiently and in conformity with national development policies. The report of the Secretary-General has usually focused on two major elements in the discussion of permanent sovereignty. The first concerns the sovereign right of States to choose natural resource development policies that they consider most suitable, and the second focuses on the objective of removing impediments to the full and free implementation of the principle of permanent sovereignty over natural resources by States.

3. The present report, like a number of prior reports, focuses on the first element by surveying the trends in State practice in activities relating to mineral and water policies and planning especially within the context of how Governments respond to other evolving principles affecting the international community.

4. With regard to such government responses, in view of the increased global awareness of environmental issues and, in particular, in the light of General Assembly resolutions 44/228 on the United Nations Conference on Environment and Development and 44/229 on international cooperation in the field of the environment, this report addresses issues (and highlights a number of them) that are of particular importance in the context of sustainable development and the exercise by Governments of their inalienable right of permanent sovereignty over mineral resources.

5. The report also highlights recent developments concerning the draft articles on the law of the non-navigational uses of international watercourses. It then discusses the legal and institutional issues relevant to the exercise of permanent sovereignty with respect to water.

6. This report deals with the removal of impediments to the full and free implementation of permanent sovereignty by focusing on the international technical cooperation activities of the Department of Economic and Social Development of the United Nations Secretariat.

I. PERMANENT SOVEREIGNTY OVER MINERAL RESOURCES IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT

A. Complementarity of principles of international law

7. As enunciated in the Declaration on the Progressive Development of Principles of Public International Law Relating to a New International Economic Order, 1/ adopted by the 62nd Conference of the International Law Association, held in Seoul from 24 to 30 August 1986, permanent sovereignty over natural resources, economic activities and wealth is a principle of international law that emanates from the principle of self-determination, and is inalienable. The principle implies that a State has national jurisdiction over its natural wealth and resources and (according to General Assembly resolution 626 (VII)) the right freely to use and exploit them. However, it does not preclude a State from accepting obligations with regard to the exercise of such sovereignty, by treaty or by contract, freely entered into.

8. Permanent sovereignty has been invoked by States mostly within the context of relations between host States and foreign companies engaged in the exploitation of the natural resources of the host States. The governing principle in this regard is that States have a right to regulate, exercise authority, legislate and impose taxes in respect of natural resources enjoyed in their territories by foreign interests, subject only to any applicable requirements of international law. Thus, in invoking the principle of permanent sovereignty, States have also had to take into account limitations imposed by the necessary complementarity of other principles of international law.

9. A subject that has recently received close attention in this context of complementarity is that of the principle of permanent sovereignty over natural resources in its interaction and complementarity with evolving principles of international cooperation for sustainable development.

B. Evolving principles of international cooperation for sustainable development

10. In its resolution 44/228, the General Assembly reaffirmed that, in accordance with the Charter of the United Nations and the applicable principles of international law, States had the sovereign right to exploit their own resources pursuant to their environmental policies, and also reaffirmed their responsibility to ensure that activities within their jurisdiction or control did not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction and to play their due role in preserving and protecting the global and regional environment in accordance with their capacities and specific responsibilities.

11. In the same resolution, the General Assembly decided that the United Nations Conference on Environment and Development (subsequently held in June 1992) should have among its objectives to promote the further development of international environment law and to examine the feasibility of elaborating general rights and obligations of States, as appropriate, in the field of the

environment, and taking into account relevant existing international legal instruments.

12. In this regard, the United Nations Conference on Environment and Development did deliberate on the subject of the principle of permanent sovereignty within the context of sustainable development, and it then proclaimed that States had, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control did not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. 2/

C. Historical background of government policy and practices

13. This report reviews recent trends in the exercise of permanent sovereignty in relation to environmental protection and sustainable development. Such a review would best be put in its proper context by first highlighting, in general terms, the historical background of government policy and practices concerning the mining sector of most host Governments, especially host developing country Governments.

14. Until the 1970s, mining companies generally operated on the basis of concessions under which the host government had an essentially passive role as a royalty collector, or later, as a tax-cum-royalty collector. The concessionaire not only enjoyed ownership of the mineral produced, but also exercised practically unfettered management prerogatives of making all critical decisions (including those concerning the protection of the environment). Even the few supervisory or regulatory powers formally vested in the host State were often of only symbolic significance, since it lacked the administrative capability and the technological capacity to enforce them. A combination of circumstances in the 1970s began to trigger change.

15. Projections of rapid depletion of non-renewable mineral resources and the growing demand for minerals in the wake of the high economic growth rates of the 1960s improved the relative bargaining power of mineral-exporting countries. These circumstances enabled host States to introduce new legal and fiscal frameworks to reshape their relations with foreign investors in the minerals sector. Among the objectives that the new frameworks aimed to secure were not only high revenues (government take), but also participation in the making of critical decisions, and acquisition of technology and managerial skills with a view to the exercising of more effective supervision of operations.

16. The 1980s, however, were marked by a progressive reduction in the bargaining power of mineral-exporting countries, particulary developing countries. Global recession reduced demand, as did successful conservation measures. Nevertheless, the new legal frameworks developed in the 1970s were maintained and, in a number of cases, acquired a level of maturity; but the mineral-exporting countries, faced with adverse external economic circumstances, have had to make their fiscal framework more attractive for

foreign investors, and to improve competitiveness in order to attract more foreign direct investment.

17. The development of the new legal frameworks that provided a more decisive role for government in exercising effective supervision of mineral operations also brought to the forefront an emphasis on environmental concerns that was previously lacking. Until then an assessment by most developing countries of the impact on the natural environment had taken a secondary if not marginal role in project planning of activities connected with mining operations.

18. Ironically, the efforts of some outside groups to raise standards in this area exacerbated the problem somewhat. The preoccupation of certain developed nations in the later 1960s and the early 1970s with environmental issues was greeted with considerable scepticism at that time by the leaders of many developing nations, and some of them even suspected that environmental protection constituted a plot to keep their countries underdeveloped. Growing fears emerged in countries of the developing world that developed country environmental concern could affect them adversely in the fields of trade, growth and the transfer of technology.

19. In contrast, today's strong awareness in both developed and developing countries regarding ecology and environmental protection, the demands of conservation and pollution reduction, and the costs involved, and the development of new, clean technologies, provide an entirely new global environment in which strategies of host Governments in the minerals sector are to be shaped. Those strategies need to be carefully assessed and their implications understood if the new trends in investment in the minerals sector are to be identified. However, there is also a need to study the implications of the weakened bargaining position of host countries noted above and in particular the possibility that the difficulties of attracting foreign investment in an increasingly competitive climate might induce some countries to initiate or approve substandard environmental projects, notwithstanding the new awareness of the costs involved.

D. Overview of current practices for environmental impact assessment in mining projects

20. Many developing countries do not have legislation specifically addressing environmental protection. However, most of those countries do utilize provisions in mining law for the purpose of setting environmental standards applicable to the mining sector. Although such provisions do not prescribe precise standards of environmental quality to be attained, they do set the basic criteria that must be translated into environmental protection measures during the actual negotiation and formulation of mining project proposals. This approach has certain advantages. For developing countries that have not yet formulated a comprehensive policy on environmental issues, using contracts to stipulate specific environmental provisions offers an opportunity to set environmental standards that are adapted to the technical and ecological particularities of each mining project without introducing the need for involvement in cumbersome legislative procedures.

21. However, ad hoc negotiation of precise environmental standards in specific contracts can also be disadvantageous to the host country. The translation of general legislative provisions into practical decisions in the course of contract negotiation may require a degree of bargaining over issues that otherwise should not be debatable. In any event it seems advisable, on balance, to encourage the enactment of a comprehensive environmental law prohibiting environmental harm and creating liability for wrongs perpetrated against the environmental wrongs.

22. The way in which negotiations of most mining agreements are carried out involves a special dimension that affects the content of environmental provisions included in the contract. It is important from the point of view of both parties that the content and scope of the provisions dealing with environment be tailored to the needs of the individual mine under consideration; however, because in most cases the negotiations are carried out prior to exploration, such adaptation to the individual case must remain incomplete (since much of the required data are not yet available at this stage). Thus, while a baseline study taking into consideration all parameters will have been carried out, the most that the agreement may further provide at this stage is the requirement that the investor, upon making a discovery, supplement the mining development plan with a comprehensive environmental assessment and management study.

23. For the host country, such open contractual stipulations have the advantage of postponing the specification of environmental requirements until a clear, accurate assessment of information need can be made. For the investor, however, such regulation may pose the disadvantage of setting no definite limits to the costs of development. In addition, the investor will be concerned that the investor and host country, taking into account the results of the environmental impact study, may fail to reach an agreement on whether the investor's development proposals are environmentally sound or not.

24. The investor is acutely aware that at the point where an economically viable deposit is identified, the interests of the Government and the investor may diverge. The investor as holder of a prospecting licence will have already spent large sums on an exploration programme and may have also spent, or contemplate further spending, very substantial sums on feasibility studies. Against this background the investor requires an assurance that if feasibility studies show a positive out-turn, he or she will have the right to mine under a secure long-term title. In principle, most Governments would see that requirement as perfectly reasonable, but very few would draw the conclusion that their legislation should give the holder of a prospecting licence an unqualified right to mine under a long-term lease or licence. Most Governments believe that the public interest requires that a grant of mining rights on a long-term basis should not be awarded unless there are appropriate understandings about the way the mining operations are going to be carried on.

25. Governments have shown a realistic appreciation of what is after all not an unreasonable attitude on the part of investors and attempted to encompass a solution to the dilemma inherent in trying to satisfy both parties through the incorporation of a set of interlocking provisions within their mining legislation. In many countries, the mining legislation provides that the holder of an exploration licence who has established the existence of an

economically viable deposit has, in principle, a statutory right to the grant of a mining lease. However, such laws provide that the applicant for a mining lease must submit in his or her application a proposed programme of mining operations and a number of countries require that the minister concerned grant mining rights only if that programme takes proper account of environmental and safety factors.

26. Some Governments take the view that in the event that the grant of a mining lease (or licence) is refused to a person who has already invested considerable sums of money and the law is treated as giving rise, in these circumstances to a justiciable issue, it may be unlikely that the kind of highly general wording used in mining laws to describe the environmental protection requirements of a proposed programme of mining operations will provide a satisfactory basis for decision by judge or arbitrator about the development plan.

27. Such Governments therefore insist that agreements expressly draw environmental criteria into the approval process for the project and expressly reserve for the Government the right to withhold its approval of plans and designs that may unreasonably damage the surrounding environment, limit its further development potential or significantly disrupt socio-political stability in the area. Agreements may also provide for standards and implementing measures and actions to be reviewed as knowledge of the environmental circumstances related to specific projects or developments changes or improves.

28. It would be futile to make the effort to set environmental standards without making provision for adequate monitoring and enforcement procedures. Various forms of monitoring and enforcement provisions relating to the environment are therefore now becoming a standard feature of some mining agreements. Such provisions consist mainly of environmental reporting requirements and government inspection rights. In addition the mining legislation in certain cases empowers government authorities to carry out necessary remedial and protection measures at the expense of investors, more particularly at the end of the mining operation.

29. Given the cycle related to bargaining strength and the variations in environmental standards discussed above, it is clear that mining companies operate in a world of heterogeneous environmental problems and policies: sovereign nations have been going about the business of environmental protection at different speeds, with different degrees of rigour and using different techniques. Variations in environmental policy follow, in part, from intercountry differences in level of industrialization and standard of living. Other policy variations exist mainly because of differences in political and social philosophy. Sometimes very different approaches to essentially similar problems reflect different traditions in relations of business and government in philosophies of collective intervention, and in patterns of industry competition.

30. In such a radically changing global environment, encompassing so many different country approaches at any given time, studies of trends in investment in the mineral sector cannot consist in extrapolations based only on past patterns and trends. Research must also focus on the new and unprecedented

dimensions that are creating a wholly new context in which innovative forms of partnership and ventures based on new forms of collaboration need to be conceptualised and designed.

31. The Committee on Natural Resources may wish to consider the modalities by which the United Nations can best develop practical guidelines, reference cases and models for environmental impact assessment of mining projects. A detailed study of current practices for environmental impact assessment in mining projects could also be undertaken. In addition the Committee may wish to consider whether a study should be undertaken of the relative effectiveness of the various methods employed by different countries in monitoring the environmental impact of mining projects.

II. WATER AND THE EXERCISE OF PERMANENT SOVEREIGNTY

A. Cooperation in the management of international watercourses

32. Previous reports submitted to the Committee have discussed special issues of water development and use and permanent sovereignty. The main argument advanced in most of those reports has been that national sovereignty has usually to be balanced against international obligations and the integrated development of international watercourse systems. The reports have highlighted numerous instances of international cooperation, particularly concerning river basin development, joint projects for power generation from rivers shared by several riparian countries, and international waterways. Given the growth in the consumption of water, which to some extent parallels economic growth and the limitations on water resources in many countries, important questions continue to arise concerning cooperation in the development and utilization of water, and joint management of international watercourses.

33. The Committee will recall that in 1970 the General Assembly recommended that the International Law Commission (ILC) take up the study of the law of the non-navigational uses of international watercourses, with a view to its progressive development and codification. At its forty-third session, the Commission adopted provisionally the draft articles on the law of the non-navigational uses of international watercourses, 3/ and decided that the draft should be transmitted, through the Secretary-General, to Governments for their comments and observations and that it should be requested that such comments and observations be transmitted to the Secretary-General by 1 January 1993. 4/

34. The Committee may wish to request that a full report on the comments of member States, and other developments on the law of the non-navigational uses of international watercourses, be prepared for its next session.

B. Legal and institutional framework for national water development

35. The exercise of permanent sovereignty over water resources does not raise complex issues in the context only of international cooperation. A sound national water resources policy must form the foundation of any meaningful

efforts at international cooperation. This report therefore focuses on a number of legal and institutional issues relevant to the formulation and implementation of such a water resources policy.

36. Because water is a flow resource, a scarce one, and one with a high potential to engender both positive and negative externalities, the proper regulation and public control of water resources and related activities are essential for a successful water conservation and development system. Nevertheless, it is important to emphasize that the role of legislative and institutional arrangements governing water resources is not limited to merely regulating (in other words, controlling) certain activities or sets of activities. Legislative and institutional arrangements also determine the framework within which the private sector is prompted to invest in water resources development and conservation and therefore perform a structural function of socio-economic engineering, since they determine the manner in which economic agents relate to productive resources. This function of the law has tremendous relevance to conservation and developmental goals, for consequent on its operation those agents are induced to perform certain types of activities, if economically beneficial, of their own free will and on a continuous basis. The critical issue is the ability to strike the right balance between the structural and the regulatory components of a system.

C. Main regulatory elements

37. Generally speaking, the regulatory elements of a legislative and institutional framework governing a sustainable system for water development aim at the protection of the resource base, the assurance of an acceptable level of efficiency in the use of water, and the prevention of non-authorized uses.

38. For such purposes the elements generally covered include:

(a) Public ownership or control of water resources and issuing of permits to allow the use of waters, or to effect discharges into them;

(b) Allocation of water rights, subject to conditions of effective and beneficial use, including in some cases rules on reuse;

(c) Definition of what is to be considered beneficial use, including, in some legislation, consideration of environmental concerns;

(d) Public priorities and preferences in the use of water, and the allocation of water rights, according to the economic, social and physical characteristics of the country;

(e) Public control of water quality and of activities having a bearing on its deterioration, including the use of strict liability clauses for environmental damages, discharge- and water-quality standards, control of the use of products affecting water quality, technological requirements and land-use regulations;

(f) Public control of water use, to ensure that water is used according to publicly allocated, or publicly acknowledged, water rights. Such control requires the implementation of monitoring measures, including rights of entry, power to require information and records and to take samples, approval of significant waterworks, and power to require special practices in the manner in which water is used, to suspend water uses in case of wrong uses or practices, and to revoke water uses in case of serious infractions or non-use;

(g) Protection of water sources, and water-supplies, including basin protection and management, control of deforestation, protection of groundwater sources and recharge areas, integrated water resources planning, and conjunctive use of surface water and groundwater;

(h) Public rights over private property, including rights of way, or other encumbrances, and restrictions or limitations on private property, in order to ensure sustainable development of water resources;

(i) Public right to reallocate and ration available water-supplies during times of drought, or other emergencies;

(j) Determination and collection of financial charges;

(k) Expeditious procedures for the adjudication of conflicts and for the application and enforcement of penalties for non-authorized water uses or pollution of water resources;

(l) Rules to deal with accidents and disasters, including contingency planning, prevention measures and remedial and mitigation actions.

D. Main structural elements

39. In contrast with the regulatory elements of a legislative and institutional framework governing a sustainable system for water development, the structural ones primarily relate to (a) stability of allocated water and land rights, (b) acknowledgement of existing and customary water uses and rights and (c) transferability of water rights.

40. A system that provides certain and stable water rights tends to increase productivity, since the water user will be aware that investments in water development and conservation imply capitalization of efforts. Such a system also results in an increase in conservation and improvement activities, since efforts in this direction will be protecting a future source of revenue. A legal system that, in addition to providing stability, acknowledges and recognizes traditional practices and customary uses of water, or at least compensates fairly for their elimination, enhances trust in government activities and gathers social support in the implementation of water resources programmes. At the same time it does not abruptly disrupt the pattern of ongoing socio-economic activities. Transferability of water and land rights allows users effectively involved in developmental efforts to increase their output. Subject to the overall government policies on land and water rights tenure and provided that no third party or public interest is affected, transferability of water rights is allowed in a number of countries.

41. Clearly, the structural elements of a legal system reflect issues of ownership. In some countries those issues are difficult to deal with if notions of common, tribal or clan ownership impinge upon, or replace, those of individual ownership. The attempted solution to the complications posed by common entitlements has been to give them a stability and a certainty of the kind conferred upon individual rights. However, experience has shown that in a number of the countries concerned, managers or representatives of the relevant group took advantage of their position to acquire benefits at the expense of the group. In such cases, therefore, the Government could put in place controls on the activities of the representatives or the authorities of such groups to ensure at the least: (a) equity in the distribution of the output of common entitlements and activities; (b) limitations in the powers of the authorities or representatives of the group to dispose of the common entitlements on land and waters, as well as of the resources, products, and produce ancillary or appurtenant to the common entitlement (forests, crops and so on); and (c) accountability of the managers and representatives.

E. Issues affecting market and pricing systems

42. A country formulating a water resources development policy must take into account elements that, although not intrinsically related to water resources development, influence what (if anything) will be produced by using and developing water resources, how the benefits of water development will be allocated and distributed, and for how long a particular pattern of production will be sustainable. These issues include accessibility to markets; price regulations; effective demand; organization of credit, marketing and extension services; and inappropriate incentives to production.

43. Like all economic activities, water development is intended to provide goods that should be effectively available on demand, legally marketable, and profitable to produce. Restrictions on marketing and profitability hinder the effort to implement sustainable water development systems. In this regard, some of the most obvious shortcomings to be avoided include:

(a) Restrictions on access to markets;

(b) Limitations on profitability (maximum prices, compulsory buying and so on);

(c) Ineffective systems of credit and extension services;

(d) Subsidies to the use of surface water or groundwater.

F. Functional organization and administration

44. The functional organization for policy-making, water allocation, water management, and monitoring of users plays an important role in the implementation of a sustainable water development system. Where these functions are vested in institutions with functional responsibilities for specific water uses, or for discrete economic activities, water planning and management might not be objective. In these cases each concerned party may

tend to support projects or allocations of waters according to vested functional interests, without regard to the source of supply or the soundness of investments and projects. To avoid such problems, many jurisdictions allocate responsibility for policy-making, water allocation, and programme and project evaluation to a non-user agency or ministry. There is also a trend of transferring responsibility for water-related services to provincial and local levels of government. The main point to note in this regard is that transfers might not be successful if they are not paralleled by availability of economic and financial resources at provincial and local levels.

45. The soundness of investments in water-related projects, programmes and uses is significantly enhanced if they are made subject to compulsory assessment of economic, social and environmental feasibility, as well as to sustainability analysis. The performance of such assessments or analyses is enhanced and their output more balanced when entrusted to organizations responsible for water planning and management but not involved in the promotion of specific water uses. Public participation in policy-making, planning and management is also a characteristic of successful water management systems. In many countries public participation in assessment and evaluation procedures is a common practice.

46. To be effective, a system for the planning and management of water resources must be able to provide information on what kind and quality of water are available where, and on who is using the water and for what purposes. Therefore effective water management systems require adequate official surveys, inventories and cadastres of water sources and water-supplies, as well as up-to-date registers and records of water uses and discharges into waters, water rights, and beneficiaries of such rights, with their respective water allocations.

47. Cost recovery and the payment of common expenses are an important element in the functioning of any water-related service or activity. Cost recovery systems have been best implemented in countries where legal procedures for the compulsory collection of charges in default are available. For example, under such systems unpaid charges normally constitute a lien on the property where water services, such as irrigation, are provided. Furthermore, suspension of water-supplies may also be allowed under the law. Besides legal procedures, the implementation of an effective cost recovery system requires the introduction and permanent updating of registers of water users, in order to identify the user responsible for the payment of specific charges and tariffs. Effective cost recovery is of course conditioned by the ability of the user to pay. This implies that the estimates of the costs and benefits justifying a programme or project should prove correct in practice. A programme or project characterized by user inability to pay reflects, therefore, on the merits of the evaluation process.

48. Water users, and polluters, include government corporations and State-owned agencies. Unfortunately, in some countries, the enforcement, control and monitoring measures applied against these public users and polluters often tend to be lax. In many cases such corporations or agencies use water in the absence of a formal granting of water rights, or develop water projects without harmonizing with other users, or pollute scarce supplies without regard for environmental values or for those supplies' other uses. The

existence, and enforcement, of norms controlling the water-related activities of government agencies and entities or State-owned corporations would improve the performance of many countries' systems for planning and allocating limited water-supplies. Water pollution charges can be used to recover treatment costs and to induce the implementation of pollution-control measures. In addition, legal systems that provide broad and flexible principles on legal standing for individuals and groups that wish to initiate or be part of administrative or legal actions concerning environmental protection have proved very effective in dealing with water and environmental issues.

49. Many countries are currently transferring water-related services and activities from the public to the private sector. This transfer is more effective when paralleled by the presence of relevant legislation making provision for water protection and environmental concerns, and by the prescription of rules governing the provision to the public of services related to, or based on, water. The absence of such a legislative framework may eventually result in complicated problems including liability issues and those involving the interpretation of exploitation agreements.

50. The Committee may wish to consider whether a detailed report should be prepared on the trends in different countries in formulating appropriate and adequate legal and institutional frameworks for a sustainable system for water development.

III. UNITED NATIONS TECHNICAL COOPERATION ACTIVITIES IN THE NATURAL RESOURCES SECTOR

51. To date, the United Nations system, through its technical assistance agencies, has contributed to numerous approaches of developing countries to resources development. United Nations technical cooperation activities in the field of mineral and water development are carried out primarily by the Department of Economic and Social Development of the United Nations Secretariat. The United Nations Development Programme (UNDP) provides the bulk of the funding for those activities.

52. The technical cooperation programmes have been a mix of resource assessment and investment promotion. Some of the most common forms of technical cooperation have been related to the formulation of policies, preparation of legislation and subsidiary regulations, preparation of model agreements, organization of systematic investment promotion and bidding for prospects, negotiation of contracts, monitoring of contract implementation, support in arranging financing, building up of marketing capabilities, and restructuring of the Government's involvement in the natural resources sector. Most important, the Department of Economic and Social Development has carried out training programmes for nationals that expose them, internationally, to both the academic and the practical side of the specific activity in which they are involved.

53. The aim in all these cases of technical cooperation is to develop projects that will not only lead to the development of the resource concerned, thereby triggering economic growth through government revenue flows and foreign exchange earnings, but also result in social development through transfer of

technology, increased infrastructure and educational opportunities. Ultimately the main goal is to give a country the tools with which to sustain its own activities. In many developing countries projects have been devised and completed with the assistance of the United Nations that have resulted in the better organization of resource assessment, the drafting of necessary laws, the establishment of national capacity structures and the creation of a more attractive investment climate, all of which have allowed such countries to develop their resources in a manner that contributes to the economic and social well-being of the nation.

54. The exploitation of natural resources is intersectoral, that is, it involves and affects all other aspects of the nation's activities. As a result, it is necessary to stress that such exploitation must be approached as part of an overall development strategy interconnecting with other economic, social and environmental activities. Permanent sovereignty over a nation's natural resources necessarily must be considered within the context of the overall development of the policies and programmes of each country.

55. In this context, United Nations technical cooperation is intended to promote the principle of permanent sovereignty by strengthening the ability of countries to develop natural resources effectively and vigorously in accordance with their policy priorities. Both the form and substance of United Nations cooperation reflect the policies of Governments, since the activities involved are based on the requests of Governments and are financed and implemented with the full agreement of the Government concerned with respect to type of activity and main components of the assistance requested. It may be useful to bear in mind that within the context of a tripartite concept (involving Government, UNDP and the Department of Economic and Social Development of the United Nations Secretariat) the Government plays a decisive role in initiating, formalizing and implementing a given project.

56. The Department of Economic and Social Development has endeavoured to establish a technical assistance approach that is focused on the special requirements of each particular country. There are a number of already existing methods or mechanisms that have been used to reorient and develop meaningful policy and programme approaches for this purpose. The recently established facility for technical support services at the programme level (abbreviated as TSS-1), which is one such mechanism, deserves special mention.

57. The TSS-1 facility was established to contribute, inter alia, to the achievement of a sharper technical focus by the agencies and to the enhancement of agency technical support to developing countries in the upstream stages of the programme and project cycles. 5/ Established as a new initiative relating to national execution and the programme approach started in 1992 by UNDP and called for in General Assembly resolution 44/211, TSS-1 is a mechanism by which funding can be obtained by five executing bodies of the United Nations system (the Department of Economic and Social Development, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Industrial Development Organization (UNIDO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organisation (ILO)) to study, appraise and recommend policies and programmes that can be used to formulate country initiatives and projects. TSS-1 provides an excellent opportunity for countries to obtain United Nations advice and

assistance in the development of sectoral policies and programmes, particularly in the natural resources sector.

58. The TSS-1 facility can be used to conduct studies at the country level, formulate sectoral programmes, participate in technical cooperation assessment and formulation exercises and thematic evaluations. It constitutes an initiative of the country Government conducted in cooperation with advisers from the various agencies of the United Nations system who are familiar with the country concerned and its needs.

59. The United Nations can contribute to a common thematic approach to the development of resources for the benefit of all while the sovereignty of a country is maintained for the purpose of determining the mode of development of its resources and the timing of that development. The use of TSS-1 studies and evaluations to formulate such an approach can be beneficial to developing countries in ensuring that the economic, scientific and technological objectives concerned with developing a given resource are achieved, while acknowledging and protecting the concerns of other countries. By furnishing assistance directed at the process of developing strategies and policies for resource development, the technical agencies of the United Nations system can also contribute in a major way to ensuring that the approach to operational activities called for by the General Assembly in its resolution 44/211 is accomplished.

60. Such an approach would ensure that Governments were not only likely to take into account other factors affecting the exploitation of natural resources, but also far more inclined to coordinate multilateral aid activities within their countries (since such activities would be more focused on and oriented towards certain objectives).

Notes

1/ See International Law Association, Report of the Sixty-second Conference, Seoul, 24 August to 30 August 1986 (London, International Law Association, 1987), Seoul Conference Resolutions: Legal Aspects of a New International Economic Order, paras. 5.1 and 5.2, pp. 6-7.

2/ See Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (A/CONF.151/26/Rev.1), Rio Declaration on Environment and Development, principle 2.

3/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10), chap. III, sect. D (1).

4/ See ibid., chap. I, para. 11.

5/ See United Nations Development Programme, Guidelines for 1. Determination of Execution and Implementation Arrangements, 2. Successor Arrangements for Agency Support Costs, revision 1, October 1992, chap. III, para. 3.1.1.